

EPA Entrance Follow-up 12/11/14

Injection Well Enforcement (361614)

Enforcement Protocol

1. Does the diagram we provided accurately reflect the steps EPA regions can take to enforce violations in direct implementation states?

- a. Please describe any additional enforcement mechanisms available to EPA regions that we didn't identify.
- b. Please describe OECA's and the Department of Justice's role in these processes, if any.

OECA does not have a formal role when a Region refers a case to the Department of Justice, except when the issue is either: 1) not delegated to the Region, or 2) relates to a National Enforcement Priority.

Department of Justice (DOJ) acts as the attorney representing the EPA for civil judicial matters before the federal court. Therefore, for purely administrative enforcement issues, DOJ is not involved unless the issue is appealed to District (or Appellate) Court. Alternatively, DOJ takes on this role when an EPA Regional office, or OECA, refers a matter for civil action.

Tracking Violations and Enforcement in Direct Implementation States

2. For direct implementation states, do EPA regions have set criteria for what information should be tracked on violations and enforcement?
3. Are EPA regions required to have databases to identify violators that have not met compliance deadlines?
4. How are enforcement actions tracked on the 7520? Are they only reported in the year in which the enforcement action is initiated, or are they included on the 7520 until the violation is resolved?
  - a. Are all well shut-ins and criminal or civil referrals included in 7520 reporting? Are there any scenarios where they wouldn't be included? Please explain.
5. Under what circumstances are violations referred to OECA or DOJ for enforcement or litigation?

Violations are not necessarily referred to OECA; however, as mentioned above, either when the internal delegations require or when a particular enforcement action is related to a National Enforcement Initiative (NEI), then OECA will play a role on the enforcement team and, ultimately, when approval of the settlement is required.

The circumstances under which a case will be referred to DOJ can vary from case to case; however, any time in which relief is requested from the Federal Court, DOJ will receive a referral for enforcement/litigation.

6. Does OECA have prioritization model for UIC enforcement cases similar to the models used for other SDWA and CWA programs? Why or why not?

The following Guidance documents provide guidance on the appropriate level of enforcement response: 1) 'Underground Injection Control Program Compliance Strategy For Primacy and Direct Implementation Jurisdictions – Interim Final Strategy' (March 31, 1987), and 2) 'Interim Final UIC Program Judicial and Administrative Order Settlement Penalty Policy – Underground Injection Control Guidance no. 79' (Sept. 27, 1993). See these documents as attachments.

- a. What information does OECA collect to help determine whether a UIC enforcement case should be prioritized?

Please see the Guidance documents mentions above in Question 6.

7. Does OECA set specific enforcement goals for direct implementation UIC programs?

No.

8. Is it possible to track criminal and civil cases resulting from class II violations through the CID database or a comparable database?

You will need to ask this question of the OCEFT for anything related to a criminal database. As was mention during the face to face meeting, the program office retained the database for this particular program, so you need to ask this question of the Office of Water. That said, I believe there is also a database that the Office of Compliance (OECA) keeps relating to enforcement actions. If you have not already heard back from the Office of Compliance on this question, let me know and I will follow up on this for you.

- a. Is the CID database searchable by program or statute/regulation violated?

#### Federal oversight and enforcement of state program requirements

9. Is there a protocol or guidance that program officials use to determine whether EPA should intervene to enforce violations of state class II requirements?

Please see the documents listed above in Question 6.

- a. What scenarios would require regions to step in to take enforcement actions on behalf of a state-implemented program?

Please see the documents listed above in Question 6 and, also, reach out to the Regional offices for specific responses. If this question is not adequately answered

from these sources, please let me know.

10. Can you provide any examples in the last 5-10 years where regions intervened or considered intervening on behalf of a state program to take enforcement actions?

Please let me know if the Regions have not adequately answered this question.

11. Do primacy states have set criteria for what information should be tracked on violations and enforcement? Please describe.

The answer to this question is answered on a state by state basis depending upon the statutory authority under which the particular state sought primacy and the individual state regulations approved and codified under 40 CFR Part 147.

12. Is the information on enforcement activities provided by states to regions sufficient to identify scenarios where EPA intervention is warranted?

Please let me know if this question has not been adequately answered by the Regions.

a. What additional information would be useful?

b. Why is this information not available?

13. Does OECA handle all intervention in state enforcement actions, or do some regional drinking water programs have the capability to take action themselves?

All EPA Regions have the capability to take enforcement actions, though OECA is available for consultation by the Regions.

a. Does this vary region to region?

Though every Region has the capacity, the depth of the capacity will vary region to region based on primacy states and territories, activities, etc.

14. Does OECA set specific enforcement goals for state implemented UIC programs? If so, what are they?

No. As was mentioned in the face-to-face meeting, the program office (Office of Water) retained the database and oversight of this program, unlike other programs that shifted to OECA's Office of Compliance.

#### Aquifer Exemptions

15. Has EPA completed the national database of aquifer exemptions? If so, please provide a copy of the database to GAO?

16. Given Region 9's recent findings in California that operators may be injecting into USDWs that were incorrectly permitted as exempt, does EPA plan to conduct similar studies in other states?

- a. How did EPA determine that California may have incorrectly permitted injection into non-exempt USDWs?
  - b. Are there other states that have not clearly delineated the boundaries of their aquifer exemptions for permitting purposes? Has EPA prioritized similar studies in these states?
17. Has California fully complied with all of the information requests from EPA's July letter? If not, what additional information needs to be provided?

#### Report Status Updates and Information Requests

18. What is the status of EPA's Hydraulic Fracturing and Drinking Water report? What is the schedule for the next set of deliverables?
19. What is the status of the Technical Working Group's induced seismicity report? When will the report be finalized and released?
20. EPA told us they would provide copies of the following documents:
- a. Agency Penalty Policy
  - b. UIC guidance entitled *Choosing Between Criminal, Civil and Administrative Action for UIC Violations*
  - c. General OECA Guidance
21. *The data below was provided in hard copy, but Beth Hall said she would provide electronic copies.* Previously, we requested all class II 7520 2A and 2B forms from 2008 to 2012. Given the large amount of enforcement data available on the 7520s, we would like to request 2013 and 2014 7520 2A and 2B forms/data from the following states:
- a. Kentucky
  - b. Ohio
  - c. California
  - d. Colorado
  - e. North Dakota
  - f. Texas
  - g. Oklahoma

In addition, we would like to request the following missing 7520 2A and 2B forms from each state between 2008 and 2012.

- a. Kentucky – 2011, 2012

- b. Ohio - 2009
- c. California - 2008
- d. Colorado - 2010
- e. North Dakota - 2008
- f. Oklahoma -2008, 2012